

TODD C. BANK, ATTORNEY AT LAW, P.C.
119-40 Union Turnpike, Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193

www.toddbanklaw.com

tbank@toddbanklaw.com

August 7, 2018

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Attn.: Judge William F. Kuntz, II

Re: Todd C. Bank v. Cogent, Inc., et al.
Case No. 1:18-cv-03307-WFK-PK

Dear Judge Kuntz:

I, the plaintiff in the above-referenced matter, respond to the Order (Dkt. No. 23) issued today, which states, in full:

Pursuant to rules III.B.1(i) and III.B.3 of the Individual Motion Practices and Rules of this Court, the Plaintiff in this action is ORDERED: To serve and file his request in writing, not to exceed three (3) pages in length, for a pre motion conference requesting permission to move to strike the affirmative defenses of the Defendant on ECF on notice to all parties on or before 5:00 P.M. on Tuesday, August 13, 2018. Counsel for the Defendant shall serve and file its letter response not to exceed three (3) pages in length on or before 5:00 P.M. on August 22, 2018.

(the “Pre-Motion-Conference Order”)

Procedural History

On August 6, I filed a motion (Dkt. No. 15), pursuant to Rule 12(f)(2) of the Federal Rules of Civil Procedure, to strike portions of Defendants’ Answer (Dkt. No. 10). Immediately thereafter, I filed a letter (Dkt. No. 17) explaining why I filed the motion instead of requesting a pre-motion conference. The Court denied the motion shortly after it was filed. *See* the Court’s first Text Order of August 6.

On August 6, I filed a letter motion (Dkt. No. 18) in which I requested, as an alternative form of relief, a pre-motion conference regarding my anticipated motion to strike. I did so on the chance that the Court, with or without holding a pre-motion conference, would permit me to file the motion by August 9, which is 21 days after service of Defendants’ Answer and, therefore, the last day by

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which such motion could be filed. *See* Fed. R. Civ. P. 12(f)(2); *see also* letter at Dkt. No. 17. The Court denied this request. *See* the Court's second Text Order of August 6.

On August 6, I again filed a motion (Dkt. No. 19) to strike, in which I described, in the docket text, the motion as "following denial . . . of request for pre-motion conference." The Court denied the motion shortly after it was filed. *See* the Court's third Text Order of August 6.

On August 6, I filed, following the third Text Order, a letter (Dkt. No. 22) whose docket text is: "MOTION to Amend/Correct/Supplement Order on Motion to Strike, Order on Motion to Strike, Order on Motion for Pre Motion Conference, Order on Motion to Strike." The letter stated, in full:

I, the plaintiff in the above-referenced matter, request that the Court explain why it has denied the motions that I have made today (Dkt. Nos. 15 and 16; Dkt. No. 18 (request for a pre-motion conference); and Dkt. Nos. 19 (replaced by No. 21) and 20). I make this request in order that the Court will resolve the motion on the merits. Although I do not know if the Court has denied the motions because of the "bundling" procedure (I assume that this was not the case, given that the Court denied the request for a pre-motion conference), I note that the Court's Individual Rules state that "the Court *requests* that the parties refrain from filing motion papers until the motion has been fully briefed" (emphasis added). [¶] I will appreciate the clarification."

On August 7, the Court issued the following Text Order: "ORDER denying [22] Motion to Amend/Correct/Supplement as moot in light of impending order," which the Court immediately followed by issuing the Pre-Motion-Conference Order.

Conclusion

The dates set forth in the Pre-Motion-Conference Order would prevent the timely filing of my Rule 12(f)(2) motion. Therefore, I will file it immediately after the filing of the instant letter; and I request that the Court rule upon the motion (whether or not the Court first holds a pre-motion conference) rather than strike or deny it based on the Court's Individual Rules.

Finally, I cannot now request the holding of a pre-motion conference, because doing so would likely constitute a withdrawal of the motion, and thus, again, prevent me from subsequently complying with the 21-day filing requirement of Rule 12(f)(2).

Sincerely,

s/ Todd C. Bank

Todd C. Bank

TCB/bd